INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Summary of argument	7
Argument:	
I. The consolidating corporations, by transferring their corporate assets to the petitioner, became entitled to receive the petitioner's stock. The shareholders became entitled to the stock only upon transfer to them of the right to receive it	9
II. Even if the propriety of the tax depends upon the terms of the contract, the tax was correctly imposed in this case	14
III. Even if correctly decided, the *Shreveport-El Dorado Pipe Line Co.* v. *McGraw* case does not control the case at bar	16
Conclusion	18
Appendix	19

CITATIONS

Cases:	
Consolidated Equities v. *White*, 9 F. Supp. 145	17
Gibbons v. *Mahon*, 136 U. S. 549	10
Hermel & Co., George A. v. *United States*, 10 F. Supp. 623	12
MacLaughlin v. *Westmoreland Coal Co.*, 73 F. (2d) 1004, affirming 8 F. Supp. 963	13
Marconi Wireless Telegraph Co. v. *Duffy*, 273 Fed. 197	16
Marr v. *United States*, 268 U. S. 536	12, 18
New Colonial Co. v. *Helvering*, 292 U. S. 435	11
Provost v. *United States*, 269 U. S. 443	10
Rockefeller v. *United States*, 257 U. S. 176	11, 14
Shreveport-El Dorado Pipe Line Co. v. *McGraw*, 63 F. (2d) 202	11, 12, 17
United States v. *Phellis*, 257 U. S. 156	14
Weiss v. *Stearn*, 265 U. S. 242	12
White v. *Consolidated Equities*, 78 F. (2d) 435	16

Statutes: Page
Act of June 13, 1898, c. 448, 30 Stat. 448, Schedule A 10
Revenue Act of 1914, c. 331, 38 Stat. 745, Schedule A 10
Revenue Act of 1926, c. 27, 44 Stat. 9, Sec. 800, Schedule A (U. S. C. App., Title 26, Sec. 901) 19
Miscellaneous:
G. C. M. 7542, IX–1 Cumulative Bulletin 392 11
G. C. M. 11904, XII–1 Cumulative Bulletin 434 11
Regulations 40:
Art. 4 12
Art. 12 10
Art. 13 13
Regulations 71:
Art. 26 12
Art. 34 10
Art. 35 13

In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 20

RAYBESTOS-MANHATTAN, INC., PETITIONER

v.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court below (R. 76–79) is reported in 10 F. Supp. 130.

JURISDICTION

The judgment of the court below was entered March 4, 1935 (R. 80). The petition for a writ of certiorari was filed April 6, 1935 (R. 94), and was granted May 20, 1935 (R. 94). The jurisdiction of this Court rests on Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

In accordance with a plan of consolidation the petitioner acquired the assets of two corporations under separate contracts of purchase providing for delivery of certificates of stock in the petitioner to the selling corporations or their orders, and issued stock directly to the stockholders of the two corporations. The question presented is whether the transaction involved a transfer subject to stamp tax under Section 800, Schedule A–3 of the Revenue Act of 1926.

STATUTE INVOLVED

The applicable statute is set forth in the Appendix (*infra*, pp. 19–20).

STATEMENT

The findings of fact of the Court of Claims (R. 66–75) may be summarized as follows:

The petitioner is a New Jersey corporation, organized in 1929, with a total authorized capital stock of 1,000,000 shares of common stock without par value, all of which are outstanding and have been issued as full-paid and nonassessable shares (R. 66). At the time of the incorporation of the petitioner and for many years prior thereto, three separate and distinct industrial corporations, namely, the Raybestos Company, a Connecticut corporation, the Manhattan Rubber Manufacturing Company, a New Jersey corporation, and the United States Asbestos Company, a Pennsylvania corporation, existed and were doing business, and

each was owned, controlled, and operated by entirely distinct and different interests, stockholders, and directors, and none had any interest, direct or indirect, in the business, assets or properties of the others (R. 66). A summary of the general character of each of the corporations, their assets, and business is set forth at pages 66–68 of the Record.

On May 14, 1929, the Raybestos Company, the Manhattan Rubber Manufacturing Company, and the United States Asbestos Company entered into a written agreement, signed by the president of each company, respectively, subject to the necessary action by directors and stockholders, which provided for the formation of a consolidated company to acquire all the assets of each of the three companies (R. 68). The agreement provided for the capitalization of the consolidated company and for the basis of the issuance of its stock for or in replacement of stock of the three existing companies (R. 68–69). The memorandum of agreement appears in the Record at pages 6–9.

The directors of each corporation approved the agreement at directors' meetings held by the separate corporations for that specific purpose, and thereafter the agreements as approved at these meetings were submitted to the stockholders of the corporations for approval or rejection (R. 70). The submission to stockholders was done by means of form letters mailed to holders of common stock of the corporations, enclosing copies of a "Plan and Agreement", dated May 22, 1929, as applicable

to each set of stockholders (R. 70). The letters and the "Plan and Agreement" provided that the new consolidated company would acquire all the assets and liabilities of the three existing companies, and provided for the deposit of stock by the stockholders as an assent to the "Plan and Agreement", and provided that when all the terms and conditions of the "Plan and Agreement" were complied with "depositors will be entitled to receive, upon the consummation of the plan, and upon surrender of their certificates of deposit, the stock and scrip for fractions of shares of stock, of the New Company (but only as and when issued and ready for delivery) to which they shall be entitled pursuant to the terms and provisions of the plan and this agreement" (R. 70–71). Copies of the letters sent to stockholders and the enclosures appear at pages 9–60 of the Record.

All the stockholders of each of the corporations approved the consummation of the plan as submitted, and each stockholder deposited his stock certificate or certificates with the appropriate depositary pursuant to the terms and conditions set forth in the "Plan and Agreement" dated May 22, 1929 (R. 71–72).

The petitioner was organized under the laws of the State of New Jersey on July 5, 1929, and acquired the entire business and assets of the three companies (R. 72–73). The acquisition of the business and assets of the Manhattan Rubber Manufacturing Company was accomplished pursuant to a

merger of the petitioner and the Manhattan Rubber Manufacturing Company, effected under the provisions of the General Corporation Act of the State of New Jersey as amended (R. 72). The petitioner issued ratably and directly to the individual owners of 200,000 shares of the Manhattan Rubber Manufacturing Company common stock, in replacement of their stock interests, 250,000 shares of the petitioner's stock (R. 72). This transaction is not involved in the present controversy.

The entire property of the Raybestos Company was acquired by proper deeds, assignments, bills of sale, and other instruments executed and delivered by the Raybestos Company (R. 72–73). The petitioner issued directly to the stockholders of the Raybestos Company 267,012 shares of the petitioner's stock in the proportion of 2.25 shares for each share of stock owned in the Raybestos Company (R. 73). The transactions were all in pursuance of the agreement dated May 14, 1929, the "Plan and Agreement" dated May 22, 1929, and pursuant to a contract entered into between the petitioner and the Raybestos Company dated September 9, 1929 (R. 73). The contract of September 9, 1929, provided that the Raybestos Company would transfer to the petitioner all its assets, business, and goodwill, and in exchange, that the petitioner would deliver 267,012 shares of its common stock "to the company or upon its order" (R. 73). A copy of the last-named contract appears in the Record at pages 80–86.

The petitioner acquired the entire assets of the United States Asbestos Company by means of proper deeds, assignments, bills of sale, and other instruments executed and delivered by the United States Asbestos Company in exchange for 114,000 shares of stock of the petitioner, issued directly to the stockholders of the United States Asbestos Company in the proportion of 1.14 shares for each share of stock owned in the United States Asbestos Company (R. 73–74). The transactions were all in pursuance of the agreement dated May 14, 1929, the "Plan and Agreement" dated May 22, 1929, and a contract entered into between the petitioner and the United States Asbestos Company dated September 9, 1929 (R. 74). The contract of September 9, 1929, contained the same provisions, as adapted to the United States Asbestos Company, as the contract with the Raybestos Company appearing at pages 80–86 of the Record (R. 74).

On October 13, 1932, the petitioner was notified by the Bureau of Internal Revenue that it was subject to a transfer tax of two cents a share under Schedule A–3 of Section 800 of the Revenue Act of 1926 on the number of shares of its capital stock issued as the consideration for the assets acquired from the Raybestos Company and the United States Asbestos Company, in the amount of $7,620.24 (R. 74). The petitioner paid the tax, together with interest of $165.11, making a total of $7,785.35, under protest on May 8, 1933 (R. 74). On May 15, 1933, the petitioner filed a claim for

refund of the tax and interest on the ground that in the circumstances involved there was no real transfer of a corporate interest or right to acquire it, and that the tax did not attach (R. 74–75). The Commissioner rejected this claim on December 12, 1933 (R. 75).

The petitioner paid a tax of five cents a share on each original issue of its stock, which, it is conceded, was legally imposed (R. 75).

The United States Asbestos Company was dissolved on September 27, 1930, but the dissolution was not made immediately because of pending litigation (R. 75). The Raybestos Company has not been dissolved but has continued in existence because of patent rights which are not assignable (R. 75). The Manhattan Rubber Manufacturing Company lost its identity by merging with the petitioner (R. 75).

The court below dismissed the petition (R. 80).

SUMMARY OF ARGUMENT

The tax is imposed upon transfers of legal title to "rights to subscribe for or to receive" shares of stock. The well-established principle that the ownership of corporate property is in the corporation and not in the stockholders makes it clear that when the consolidating corporations sold their assets, the corporations and not the stockholders acquired the right to receive the new stock as the consideration, and transferred that right to their stockholders. The distinction between a corpora-

tion and its stockholders is a substantial one that is not to be disregarded for tax purposes except in unusual circumstances.

The propriety of the tax, therefore, does not depend upon whether the stockholders' capital interests have been altered. The statute intends to reach all transfers, except those specifically exempted, irrespective of considerations involving the interests of the holders.

Nor should the tax depend upon the terms of the contract, because such a method for determining the tax ignores the substance of the operation in favor of unessential formalities.

But even if the tax depends upon the terms of the contract, a tax is proper here, for the agreements under which the consolidation in the case at bar took place recognized the existence in the consolidating corporations of the right to receive the petitioner's stock. Especially is this true of the final contracts under which the petitioner acquired the assets of the consolidating corporations and issued its stock to their stockholders. Each such contract provided that the petitioner would deliver to each consolidating company, or "upon its order", shares of stock to be delivered to the stockholders.

Finally, there was involved here, not a mere change of domicile of the corporation, but a consolidation of three corporations into an enlarged and greatly altered enterprise.

ARGUMENT

I

THE CONSOLIDATING CORPORATIONS, BY TRANSFERRING THEIR CORPORATE ASSETS TO THE PETITIONER, BECAME ENTITLED TO RECEIVE THE PETITIONER'S STOCK. THE SHAREHOLDERS BECAME ENTITLED TO THE STOCK ONLY UPON TRANSFER TO THEM OF THE RIGHT TO RECEIVE IT

Section 800, Schedule A–3, of the Revenue Act of 1926, *infra*, p. 19, provides for a stamp tax upon transfers of legal title to "rights to subscribe for or to receive" shares or certificates of stock in any corporation, "whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, * * *."

The Commissioner imposed a tax when the petitioner acquired the assets of the Raybestos-Company and the United States Asbestos Company, and issued as consideration therefor 381,012 shares of common stock direct to the individual shareholders of the vendor corporations, on the ground that the vendor corporations had the right to receive the shares and transferred that right to their shareholders.[1] The court below upheld the tax on the same ground.

[1] The case at bar involves no question of a tax arising from the issue of stock to the stockholders of the Manhattan Rubber Manufacturing Company which merged with the petitioner under New Jersey law (see R. 76). So far as the record shows no transfer tax was imposed with respect to that transaction.

Congress has for a long time placed a tax upon transfers of shares of stock in order to raise revenue. Act of June 13, 1898, c. 448, 30 Stat. 448, 458, Schedule A; Revenue Act of 1914, c. 331, 38 Stat. 745, 759, Schedule A. The terms of the statute are broad, evidencing clearly a purpose to reach transfers whether they take the ordinary form of sales or not. Cf. *Provost* v. *United States*, 269 U. S. 443, 458–459. The exemptions in the statute are specific, serving to give emphasis to the comprehensive scope of the law. The Treasury Regulations have been drafted to give the statute its intended broad application. Reg. 40 (1919, 1922, 1924 eds.), Art. 12; Reg. 71, Art. 34, relative to Revenue Act of 1926.

The rule which we contend should be applied in this case is that when A corporation by agreement transfers its assets to B corporation in consideration for the issuance of stock by B to stockholders of A, the transferor corporation acquires the right to receive the issued shares which by the agreement it contemporaneously transfers to its stockholders. The above follows, we submit, from the well-established principle that the ownership of the corporate property is in the corporation and not in its stockholders. *Gibbons* v. *Mahon*, 136 U. S. 549, 557. The corporation, therefore, as distinguished from its stockholders, is entitled to the consideration upon the sale of the corporate assets. The distinction between the corporation and its stockholders is a substantial one for tax purposes and is to be dis-

regarded only in exceptional situations. *New Colonial Co.* v. *Helvering*, 292 U. S. 435, 442. It is not to be disregarded simply because the stock is issued directly to the stockholders of the vendor corporation. *Rockefeller* v. *United States*, 257 U. S. 176, 182–183. Therefore, the consolidating corporations in the case at bar became entitled to receive the shares of the petitioner issued in consideration for the transfer of the assets of the corporation to it. The shareholders of the consolidating corporations secured the new stock only by means of a transfer of the right to receive it. That transfer, we submit, the statute intended to tax.

The Treasury Department has consistently applied the rule adopted by the court below and has laid a tax upon transactions in which the shares of a new corporation are issued directly to the stockholders of consolidating corporations, G. C. M. 7542, IX–1 Cumulative Bulletin 392; G. C. M. 11904, XII–1 Cumulative Bulletin 434. The courts have not always upheld the practice. In *Shreveport-El Dorado Pipe Line Co*, v. *McGrawl*, 63 F. (2d) 202 (C. C. A. 5th), it was held that the statute did not impose the tax where, although one corporation exchanged its assets for the stock of a new corporation issued directly to the shareholders of the old corporation, the transaction involved was intended only to change the corporate domicile. The reasoning of the court was that in such circumstances "there is no real transfer of a corporate interest or of a right to acquire it where, after the consum-

mation of the reorganization, each stockholder legally owns substantially the same corporate interest which he owned before" (p. 205). We submit, however, that Congress did not intend so to limit the application of the statute, but on the contrary intended to tax all transfers whether the stockholders' capital interest was materially changed or not. *George A. Hormel & Co.* v. *United States*, 10 F. Supp. 623 (Minn.). Indeed the statute taxes the transfer even though the holder is not entitled "in any manner to the benefit of such stock, interest, or rights", thus further evidencing the intention to reach every manner of transfer. Schedule A–2, imposing a tax upon the issuance of capital stock, where, we submit, one would particularly expect to find exemption if Congress intended to lay no tax when the stockholders' interests were not changed by the transaction, provides for the tax on each original issue "whether on organization or reorganization." Even the issuance of a stock dividend is subject to tax under Schedule A–2. Reg. 40, Art. 4; Reg. 71, Art. 26.

The cases relied upon in the *Shreveport-El Dorado* decision were concerned with the question of whether in the circumstances presented the shareholders obtained any taxable income from the receipt of new shares exceeding in value the cost of the shares surrendered. See *Weiss* v. *Stearn*, 265 U. S. 242; cf. *Marr* v. *United States*, 268 U. S. 536. No such question relating to the power of Congress to lay the tax is present here, and no doubt

concerning the constitutional validity of the tax imposed here impels a construction of the statute that would exclude the tax.

The petitioner argues that the stockholders of the Raybestos Co. and the United States Asbestos Co. simply replaced their stock with shares of the petitioner, and that there was no sale of assets (Br. pp. 4–8). As urged elsewhere in this brief, we think that there was a sale of assets. But even if the transaction is to be described as the petitioner contends, we submit that it would involve a transfer tax. In the petitioner's view of the matter, the petitioner acquired the old stock in exchange for its stock (see Br. p. 5), in other words, the petitioner purchased the stock of the other companies. Such a purchase, we submit, would involve a taxable transfer of the shares from the shareholders to the petitioner, for in connection with consolidations the Treasury Regulations have exempted nothing more than the "surrender" of the stock of the consolidating corporations. Reg. 40, Art. 13; Reg. 71, Art. 35.

In *MacLaughlin* v. *Westmoreland Coal Co.*, 73 F. (2d) 1004 (C. C. A. 3d), affirming 8 F. Supp. 963 (E. D. Pa.), on opinion below, it was held that no tax was payable when one corporation transferred its assets to a new corporation under a contract, which, as distinguished from the original offer of the vendor corporation to exchange assets for stock, provided that upon the delivery of the assets the new corporation would issue stock directly to the

stockholders of the old corporation. The court based its decision upon its construction of the contract. We submit that such considerations should be rejected as a basis for determining whether a tax is proper, for they make the imposition of the tax depend upon the formalities of the transaction rather than upon the substance of what was accomplished. It concedes that if the contract technically recognizes the corporation's right to receive the stock, the tax must attach; but if the parties produce the same result without taking cognizance of the intermediate step in the operation, they may escape the tax. We submit that the form in which the plan of action is cast cannot obscure its substance for tax purposes. *United States* v. *Phellis*, 257 U. S. 156; *Rockefeller* v. *United States*, *supra*.

II

EVEN IF THE PROPRIETY OF THE TAX DEPENDS UPON THE TERMS OF THE CONTRACT, THE TAX WAS CORRECTLY IMPOSED IN THIS CASE

If the propriety of the tax is to be determined by the provisions of the contracts under which the parties acted in effecting the consolidation, as was held in *MacLaughlin* v. *Westmoreland Coal Co.*, *supra*, nevertheless we submit that the tax should be imposed here.

The original agreement of May 14, 1929 (R. 6–9), which was subject to approval by the stockholders, clearly recognized that the assets belonged to the consolidating corporations. The same is true

of the "Plan and Agreement" and accompanying letters (e. g., R. 9–26). The contract of September 9, 1929 (R. 80–86), which was the final binding basis for the consolidation, provided that in exchange for the assets of each consolidating company, the petitioner *"will deliver to the Company or upon its order"* certificates of stock, "which certificates will be delivered for account of and will represent shares of such stock issued directly to the holders of common stock of the Company" (see R. 82). This provision, we submit, states in effect that the delivery of the petitioner's stock direct to the stockholders of the consolidating corporations was to be made pursuant to the order of those corporations. The covering letter accompanying the final contract (R. 80) also expresses the substance of the matter as understood by the parties when it spoke of the sale of assets of each company to the petitioner as being "in exchange for shares of your stock to be distributed to the stockholders of the Company pursuant to the said Plan." Still further evidence of the intention of the parties appears in the final contract where it is provided that, if any stockholder not voting for the plan demanded payment for his stock, the petitioner would "in lieu of the delivery to the Company of the certificate for your [the petitioner's] Common Stock and Common Stock Scrip issuable to such stockholder on the basis above stated, pay to the Company for distribution to such stockholder pur-

suant to the Plan such sum in cash as in accordance with the laws of Connecticut shall be payable to him" (R. 82).

We submit, therefore, that pursuant to the provisions of the contracts the petitioner's stock was issued directly to the stockholders of the consolidating corporations on orders of each, and that the execution of those orders constituted a transfer of the right to receive the shares. Cf. *Marconi Wireless Telegraph Co.* v. *Duffy*, 273 Fed. 197 (N. J.).

White v. *Consolidated Equities*, 78 F. (2d) 435 (C. C. A. 1st), is to be distinguished. There individual subscribers bought voting-trust certificates from brokers who were empowered to sell such certificates. The stock was issued directly to voting trustees. It was held that there was no taxable transfer of a right to the stock from the subscribers to the trustees, since the subscribers did not come in contact with the corporation and contracted only for the voting-trust certificates. The case, therefore, is not inconsistent with the case at bar where the petitioner was a party to the contracts providing, as we contend, for the transfer that has been taxed.

III

EVEN IF CORRECTLY DECIDED, THE SHREVEPORT-EL DORADO PIPE LINE CO. V. M'GRAWL CASE DOES NOT CONTROL THE CASE AT BAR

The consolidation here accomplished much more than a mere change of corporate domicile. It produced a much larger enterprise than formerly ex-

ated in any of the corporations, by combining the assets of three corporations. A Connecticut, a Pennsylvania, and a New Jersey corporation were brought together in a new corporation in New Jersey. The new shares represented an interest in property and in an undertaking that the former shares did not.

As the record shows, the Raybestos Co. and the United States Asbestos Co. each owned extensive properties (R. 67, 68). The Manhattan Rubber Manufacturing Co. was engaged in the manufacture of products different from the other two companies (R. 67–68). Thus, the manufacture of asbestos products and mechanical rubber goods was combined in the new corporation. Furthermore, it appears that the stockholders of the old corporations did not receive all the petitioner's shares, for 45,000 shares were sold for cash at $30 a share in order to retire existing preferred stock of the old companies, and for other purposes. And, obviously, with the retirement of the preferred stock the new corporation presented a capital structure different from that of the old companies. Finally, the shares of the petitioner were without par value, while those of the Raybestos Co. and Manhattan Rubber Manufacturing Co. had been shares of $25 par value. We submit, therefore, that the present case is not within the decision in *Shreveport-El Dorado Pipe Line Co.* v. *McGrawl, supra,* even if the rule there stated be assumed correct. *Consolidated Equities* v. *White,* 9 F. Supp. 145 (Mass.). The rule would not apply here for the reason stated

by this Court in *Marr* v. *United States, supra* (pp. 541–542):

> The case at bar is not one in which after the distribution the stockholders have the same proportional interest of the same kind in essentially the same corporation.

CONCLUSION

The consolidating companies, as distinguished from their stockholders, were entitled to receive the consideration for the sale of corporate assets to the petitioner. That consideration was the issuance of stock by the petitioner. The stockholders of the consolidating companies acquired the stock only by a transfer to them from the consolidating corporations of their right to receive the stock.

It is immaterial whether the consolidation changed in any essentials the former corporate enterprise, though substantially changed here. And further, the tax is proper in this case in view of the provisions of the contracts under which the consolidation took place.

The judgment of the court below should be affirmed.

Respectfully submitted.

STANLEY REED,
Solicitor General.
FRANK J. WIDEMAN,
Assistant Attorney General.
JAMES W. MORRIS,
A. F. PRESCOTT,
J. R. FILLMAN,
Special Assistants to the Attorney General.

OCTOBER 1935.

APPENDIX

Revenue Act of 1926, c. 27, 44 Stat. 9, 99, 101:

SEC. 800. On and after the expiration of thirty days after the enactment of this Act there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this title, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, are written or printed, by any person who makes, signs, issues, sells, removes, consigns, or ships the same, or for whose use or benefit the same are made, signed, issued, sold, removed, consigned, or shipped, the several taxes specified in such schedule. The taxes imposed by this section shall, in the case of any article upon which a corresponding stamp tax is now imposed by law, be in lieu of such tax.

* * * * *

SCHEDULE A.—STAMP TAXES

* * * * *

3. Capital stock, sales or transfers: On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to shares or certificates of stock or of profits or of interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or

shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock, interest, or rights, or not, on each $100 of face value or fraction thereof, 2 cents, and where such shares are without par or face value, the tax shall be 2 cents on the transfer or sale or agreement to sell on each share: *Provided*, That it is not intended by this title to impose a tax upon an agreement evidencing a deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, nor upon the delivery or transfer for such purpose of certificates so deposited, nor upon mere loans of stock nor upon the return of stock so loaned: *Provided further*, That the tax shall not be imposed upon deliveries or transfers to a broker for sale, nor upon deliveries or transfers by a broker to a customer for whom and upon whose order he has purchased same, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: * * * *

(U. S. C. App., Title 26, Sec. 901.)

U. S. GOVERNMENT PRINTING OFFICE: 1939